



JUDGES MATTER

Judicial Service Commission interviews

11 April 2018.

Electoral Court

Interview of Mr RJ Lawrence

DISCLAIMER: These detailed unofficial transcripts were compiled to the best of the abilities of the monitor. However due to capacity constraints they have not been fully edited. We have therefore made the video recordings available that were taken during the interviews available. Those wishing to cite or quote from the transcript are encouraged to check accuracy with reference to the video file.

Mr Lawrence: I thereafter saw the add and I applied for the position, having been quite interested in what I experienced on the day of the elections.

CJ M. Mogoeng: Yes. An electoral environment of this nature – of the nature that requires the attention of your Court as and when there are disputes tends to be somewhat volatile. It's a charged environment and it arguably requires some understanding of the political environment. What is it that prepared you for fulfilling your role in that environment more meaningfully?

Mr Lawrence: CJ, I don't think one can ever be totally prepared before you actually sat in the Court and experienced the reality of it, but I think the fact that I've acted as a Magistrate in the Bloemfontein Courts and surrounding Courts, which are fairly busy Courts, where there's pressure and one needs to get decisions and judgments out quickly and I think that scenario would've stood me in good stead, what I've

learned from acting, regarding the conduct of proceedings, case law management, the necessity of good time management the concept of judicial independence and accountability. All of those lessons will stand me in good stead when I come under what no doubt will be some severe pressure in the Electoral Court.

CJ M. Mogoeng: Is it fair to say that there are things about politics or a political environment, or a politically charged environment that requires much more than an understanding of the law to do justice to the issues?

Mr Lawrence: I think as a Judicial Officer in any Court and probably more so in the Electoral Court, the Judicial Officer has to be constitutionally aware and enlightened and aware of what's happening around him politically, so I don't think I would be correct in thinking, if I did that just being a Judicial Officer and just knowing the law would be sufficient. No, it wouldn't, CJ.

CJ M. Mogoeng: How would you say you've equipped yourself for that environment, so that no matter the nuances, you'll be equal to the task of dealing with these, at times sensitive, at times volatile, at times nuanced matters in a manner that ultimately results in real justice being done?

Mr Lawrence: CJ, I keep myself fairly well informed about current affairs and what's happening in our country, although I'm not politically active so to speak, I do take an interest in the activity and of politicians and what is happening politically in the country, so I am aware of what is happening, when it's happening and that would be used in my understanding and in my judgments in the Electoral Court.

CJ M. Mogoeng: And that has given, would you say a fair sense of what implications could flow from a decision you might have to take in an environment such as this?

Mr Lawrence: I think it does, CJ.

CJ M. Mogoeng: Very well. Justice Shongwe?

Mr Shongwe: Thank you, CJ. Mr Lawrence, how are you?

Mr Lawrence: Fine and yourself? I'm not sure whether I should address you as JP or Chair?

CJ M. Mogoeng: He prefers Chair, actually.

Mr Shongwe: Well, the law says I'm a Chairperson. Now, I heard you say that you're not politically active. Are you a member of a political party?

Mr Lawrence: I am not, Chair.

Mr Shongwe: Now, you've also indicated that you have acted as a Magistrate?

Mr Lawrence: Correct, Chair.

Mr Shongwe: Now, when you're not acting as a Magistrate, what do you do? Because I would understand that you have the stint to act as a Magistrate. Now, when you are not acting, what do you do?

Mr Lawrence: Chair, I've been acting as a Magistrate for the last 40 months.

Mr Shongwe: 14 months?

Mr Lawrence: 40 – four zero.

Mr Shongwe: 40 months. So, you're not appointed for a certain period – a term or a year and then you renew it? What or how do you (indistinct).

Mr Lawrence: Chair, I'm appointed for three months at a time and then motivation is done on extension of the contract for a further three months the Deputy Minister will make a decision whether or not to renew the contract.

Mr Shongwe: So, have you applied to be a Magistrate?

Mr Lawrence: I made application on the last round for one vacancy. There was one vacancy in Bloemfontein and I was not shortlisted.

Mr Shongwe: In the 40 months you applied once?

Mr Lawrence: There was only one round of adverts, Chair.

Mr Shongwe: I see. I see. Now, you see, you mentioned that you were an independent observer, in other words you were requested by the Local IEC to assist them. Am I correct?

Mr Lawrence: Chair, I was accredited through the Law Society of South Africa.

Mr Shongwe: Law Society of South Africa?

Mr Lawrence: Correct.

Mr Shongwe: I see. And I'm sure you will appreciate that being an observer in an election situation is far much different from being a Presiding Officer in a Court of law.

Mr Lawrence: Yes, Chair, without a doubt. Being an observer would only cover Chapter 4 parts 1, 2, 3 and 5.

Mr Shongwe: I see. Do you know how many members of Court are there at the present moment?

Mr Lawrence: Three, Chair.

Mr Shongwe: Now, in terms of Section 174(2) of the Constitution, it provides, amongst others, that the – this body should consider, when appointing Judicial Officers in this Court, the racial and gender composition of the South African population. What is your thought about that provision?

Mr Lawrence: Thank you, Chair. Without hesitation, Chair, I must concede that I'm not the ideal candidate in terms of Section 147(2) of the Constitution. When I woke up this morning and I'm sure when I wake up tomorrow I will still be white, and I will still be male and unfortunately those are not the ideal characteristics in terms of gender. I think we are on the High Court bench at 36 % female and I think on the High Court bench 34 % white, so I don't fit in terms of Section 174(2). I make that concession.

Mr Shongwe: Well, I'm referring specifically with the present constitution of the Court, the members of that Court.

CJ M. Mogoeng: Maybe you could just remind him, Chair, of how it's composed, so that he has a clear understanding of where you're getting to.

Mr Shongwe: Thank you. At the present moment, as you indicated that we are three, there are two – it is myself as the Chairperson and there are two white male members of the Court at the present moment and I see there's a candidate who's also coming that's female.

Mr Lawrence: Yes, Chair. I'm aware of that. That's why I make the concession readily.

Mr Shongwe: Chief Justice, I've got no further questions.

CJ M. Mogoeng: Thank you, Chair. Commissioner Nyambi? If you could switch off your mic, Chair?

Mr Nyambi: Thanks, CJ. Afternoon, Mr Lawrence.

Mr Lawrence: Afternoon, Commissioner.

Mr J. Nyambi: When you responded to CJ, you said you keep yourself aware about current affairs. If you can share with us, how are you able to keep yourself aware with current affairs?

CJ M. Mogoeng: And please try to be as brief as possible.

Mr Lawrence: Thank you, Commissioner. I keep myself aware via the media primarily. I also am involved with discussions with colleagues and such fort, so I keep myself up to date with what's transpiring – the current affairs in the country.

Mr J. Nyambi: In more than three years you said you availed yourself once for the position of being a Magistrate. You were aware once that there was a position? Are you implying that it was only chance or it's only once that you were aware?

Mr Lawrence: Commissioner, I applied for a position – a permanent position as a Magistrate in Bloemfontein. My position was such that I practised in Port Elizabeth for approximately 18 years and had a paralegal training school for approximately five. I am of the belief that equality is a serious issue. I believe it starts at home, as a result of which I agreed to a move, when my wife was promoted and moved to Bloemfontein. The entire family moved here, and it would've made no sense for me at that stage to apply for any other area, other than Bloemfontein. So, that's the only area that I applied for in order to remain here with my family.

Mr J. Nyambi: Thank you, CJ.

CJ M. Mogoeng: Thank you, Commissioner Nyambi. Minister?

Mr Masutha: Thanks for clarifying the last point upon the question by Honourable Nyambi, because in answering this question earlier, you said the opportunity occurred only once in the period that you have acted and it was a bit confusing, but something that strikes me is that the last batch that was appointed in the Magistracy was in the order of close to 200 and you are saying that you were not even shortlisted in that huge batch and that was not the only huge batch, say in the last five years. Could there have been any particular considerations in your view, which could have resulted in you not even being considered for shortlisting, if any and of course, if it's an unfair question, you don't have to answer that, because you wouldn't necessarily know the minds of those that shortlist.

Mr Lawrence: Thank you, Minister. I apologise for the confusion that I might have caused by my previous answer. In my time that I've been acting, there's only been one post – one vacancy advertised for the Bloemfontein Magistrates Court. That vacancy I indeed applied for. I was not shortlisted. There were two acting Magistrates who better fitted the provisions contained in Section 174(2) of the Constitution. Both those Magistrates were shortlisted for that one vacancy. One subsequently was appointed and there is no reason other than that that I was given for me not being shortlisted.

Mr Masutha: But this confuses me even more, because the position you're applying for, as I understand it, is not necessarily located in Bloemfontein and yet it seems as if you forfeited the opportunities that availed themselves, dare I say in their hundreds, since you have started acting, of joining the magistracy and chose to only apply for only one out of those hundreds of vacancies, in Bloemfontein, because you preferred for family and other circumstances to be in Bloemfontein and yet this Court, as I understand it, is not located in Bloemfontein.

Mr Lawrence: Thank you.

Mr Masutha: I'm a bit confused. Please (indistinct).

Mr Lawrence: Thank you, Minister. As I understand it – I stand to be corrected, the seat of the Electoral Court is in Bloemfontein, in the offices of the SCA. I have subsequently – in fact, I posted my application yesterday for appointment as a Magistrate to Bloemfontein – Petrusburg, where I'm currently Acting Head of Office and Botshabelo.

Mr Masutha: And finally, I hope this is also not an unfair question. Is it for convenience that a position arose in Bloemfontein in the Electoral Court, as opposed to any other judicial appointment anywhere else that motivated you specifically to apply for the Electoral Court, or do you feel that you are ready and the ideal candidate for taking up a position in that specific Court, not just that it happens to be located in Bloemfontein, which would have been (indistinct)?

Mr Lawrence: Thank you, Minister. I believe that I am ready. I believe that I am, barring the provisions of Section 174(2), an ideal candidate for appointment in the Electoral Court and coincidentally, Minister, it is a convenient location, but that's not the reason.

CJ M. Mogoeng: Thank you, Minister. Commissioner

Ms Nkositoma: Thank you, Chief Justice and good afternoon, Mr Lawrence.

Mr Lawrence: Good afternoon, Commissioner.

Ms Nkositoma: Mr Lawrence, the Court to which you are applying, namely the Electoral Court, is not only a specialised or a specialist Court, but it is also a specie of an urgent Court, if I may put it that way, because matters that go there require to be dealt with as urgently as possible, given the fact that half the time the elections would be underway or about to be commenced with. So, my question to you, with that in mind, is what exposure, if any have you had to the legal framework that applies to election law, as well as the jurisprudence in that regard? You'll think, you know, cases such as Tlokwe, Langeburg Municipality, August for that matter. There's been a whole host of pronouncements by the Constitutional Court. Now, my question is, apart from being an observer at the IEC, have you ever been challenged to deal, technically and forensically, with that – with the legal framework as it were. Thank you.

Mr Lawrence: Thank you, Commissioner. I have never appeared or litigated in the Electoral Court, nor have I adjudicated matters in the Electoral Court. I do have a general understanding of the legal framework, which governs the proceedings in that Court. I am aware of cases by way of example. You mentioned August and the right of prisoners to vote and the fact that the actions of the Commission – the electoral commission, not the commission, effectively amounted to disenfranchisement of those voters. I am aware that the Court in essence said there that it is the function of the commission to determine how and not who votes. So, I am aware of some of the case authorities that govern the Electoral Court; the Tlokwe Municipality matters of

(indistinct) and Nhlope. I am aware of those decisions – the recent SCA decision on the Cape party, where it decided that its jurisdiction for by-elections is not usurped, in terms of Section 96(1) of the Electoral Act. I have a general understanding. It is a fairly complicated set of Acts and I wouldn't say I'm an expert by any means, but I take comfort in the fact that if I were to be recommended and appointed, I would have the guidance and support of three very experienced and senior Judges, from whom I could learn an incredible amount.

CJ M. Mogoeng: So, very briefly, is it fair to say, you are not just aware, you've studied those judgments?

Mr Lawrence: I have looked...

CJ M. Mogoeng: And the legislations?

Mr Lawrence: Thank you, CJ. I have looked at the authorities. Yes, CJ.

CJ M. Mogoeng: You are done?

Ms Nkositoma: I am indeed.

CJ M. Mogoeng: Thank you so much. Thank you. Commissioner?

Mr Singh: Thank you, Chief Justice. Good afternoon, Mr Lawrence.

Mr Lawrence: Afternoon, Commissioner.

Mr Singh: Chief Justice, I'm not going to canvas the point about what prompted you to apply, because I think the Chairperson and the CJ and the Commissioner Nkositoma canvassed that. I'm just – for clarity, only after you acted as an observer, you thought you were ready, inter alia the other fact about judgments; you thought you were ready to apply for this post? Am I correct in that?

Mr Lawrence: Commissioner, if I understand your question correctly, my answer would be no. My interest was piqued when I observed the various procedures at the

elections, but by no means, at that stage was I ready to make the application I made today.

Mr Singh: Okay, I won't canvas that further. I just want to ask you one question, in the South African context – political context... There is a political party, which I shall not name – in the last elections they put out an active message to South Africans – don't waste your vote on small parties. What is your view to that kind of thinking?

Mr Lawrence: Commissioner, in principle I would obviously want to have the full facts before me, before I made any kinds of judgment on it, but in principle I think fairness must prevail in campaigning and if the campaigning is such that it effects another party unfairly, I think the Court would have to look at that.

Mr Singh: Chief Justice, just a follow-up. I'm asking, not from the Court's point of view, but just your general view and I thought you would talk about multi-party democracy in South Africa, being a country that allows, you know, multi-party democracy and every party should have a right to contest an election. I mean, that's the kind of answer I was looking for. So, when somebody says don't waste your vote on a smaller political party, I mean, what's your view?

Mr Lawrence: Mr Commissioner, I would have no problem, as long as the conduct falls within the electoral code of conduct.

CJ M. Mogoeng: Commissioner Notyesi.

Mr Notyesi: Thank you, Chief Justice. A few questions. I'm just looking on your answers – into your questionnaire – on your questionnaire. In 2014, 2015, 2016 and 2017 you say you're a member of NADEL and you serve in the committee of NADEL in that branch. Tell me, who in 2014 was the Secretary General of NADEL, Nationally?

Mr Lawrence: Thank you, Mr Commissioner, if my memory serves me correctly, it was Judge Jadji – I think.

Mr Notyesi: And lastly... And then if you go...

CJ M. Mogoeng: Commissioner, your mouth has shifted from the mic.

Mr Notyesi: And then, I note in your answers that you were a member of SASCO in 1991 and subsequently as ANC's League in 1991 and subsequently as – until 1993 of course. When did you cease to be – in fact, no, I mean, you are no longer a member of the Youth League, of course, because of your age. Did you at any stage join the mother board of the ANC's league?

Mr Lawrence: Commissioner, I did not.

Mr Notyesi: Why not? What was the reason?

Mr Lawrence: In 1993 I made a decision that I could better help my community through the practice and application of law and I decided that I was certainly no politician.

Mr Notyesi: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner. Commissioner Didisa?

Ms Didisa: Thank you very much, CJ. In your response, but also in the document, you mentioned that you were an observer in one of the elections. I wanted to know, how long was that period? Do you think it helped you to understand or rather to enthuse you that you can undertake this responsibility, as a Judge in the Court?

Mr Lawrence: Thank you, Commissioner. In preparation for acting as an observer at the elections, there was a Law Society course that had to be attended and the actual observation occurred from approximately 06:00 in the morning till 06:00 the next morning, but I would say, Commissioner that having practically seen the elections take place, I was better placed, for example when reading one of the judgments by Judge Webner, to understand what he was talking about, for example when he mentioned that there may be a problem in the next national elections with, for

example, marking of identity documents, because if you practically understand how the procedure works, you – it enables you to more easily understand what has been said in, for example this judgment, where the provisions of the Electoral Act provide for the marking of an identity document, but the Municipal Election Act does not. So, how do you mark an identity card? It's something that needs to be looked at, which I probably would not have understood from the judgment, had I not practically seen it.

CJ M. Mogoeng: Thank you, Mr Lawrence. You're excused.

Mr Lawrence: Thank you, CJ, Members of the Commission. Thank you.